

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNUM Life Insurance Company of
America,

Civil No. 13-cv-1214 (MJD/TNL)

Plaintiff,

ORDER

v.

Shelly L. Zaun,

Defendant.

Chad A. Staul, Wessels Sherman Joerg Lyszka Laverty Seneczko PC, 9800 Shelard Parkway, Suite 310, Minneapolis, MN 55441, Counsel for Plaintiff.

Katherine L. MacKinnon and Sarah J. Demers, Law Office of Katherine L. MacKinnon, 3744 Huntington Avenue, St. Louis Park, MN 55416, Counsel for Defendant.

The above-entitled matter comes before the Court on Plaintiff's objections to the Report and Recommendation of United States Magistrate Judge Tony N. Leung dated May 29, 2014. [Docket No. 24]. Plaintiff has objected to the Report and Recommendation, arguing that Magistrate Judge Leung erroneously denied its motion to dismiss Defendant's counterclaim. In the alternative, Plaintiff asks

this Court to remand the benefits calculation to the Plan Administrator. The issue of remand was not addressed to Magistrate Judge Leung.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based on that review, the Court will adopt the Report and Recommendation and deny the motion to dismiss. The Court will also deny Plaintiff's request to remand the benefits calculation to the Plan Administrator, as the issue of remand was not briefed and argued before Magistrate Judge Leung, and because the counterclaim is, in effect, a compulsory counterclaim.

IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss the Counterclaim [Doc. No. 24] is **DENIED**.

Date: July 22, 2014

s/ Michael J. Davis
The Honorable Michael J. Davis
Chief Judge
United States District Court